Strategic Sourcing Acquisition Center of Excellence

LEGAL ISSUES AT THE STRATEGIC SOURCING CENTERS OF EXCELLENCE

INDUSTRY DAY

Charleston, SC

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INTRODUCTION- This brief will provide:

- Summary of legislation that may affect the competitions performed by the Centers of Excellence.
- Overview of some relevant issues under the new Circular
- Organizational Conflicts of Interest and Firewalls

INTRODUCTION, Cont.

- **This brief will *NOT* provide:**

LEGAL ADVICE

10 United States Code 2462

- **DoD must procure each supply or service (unless inherently governmental) from a source in the private sector** *if the cost is lower*
- **All costs considered in the comparison must be realistic and fair**
- **GAO takes protest jurisdiction**

10 United States Code 2462 -Impacts

- **No Cost/Technical Tradeoffs (unless IT)**
- **Centers Of Excellence will be selecting service provider based on Low Priced Technically Acceptable, to include Phased Approach**
- **Cannot exclude the Agency Tender from the competition**

DoD Appropriations Act

- **§8022 – None of the funds appropriated by this Act shall be available to perform any cost study pursuant to the provisions of OMB Circular A-76 if the study being performed exceeds:**
  - » 24 months after initiation of a study for a single function activity, or
  - » 30 months after initiation of a study for multi function activity
  - » Relief for studies if solicitation released prior to 30 September 2003

DoD Authorization Act

- §335 - No Studies or Competitions may be conducted under the revised Circular until the end of the 45 day period beginning on the date on which DoD submits to Congress a report on the effects of the revisions.
- The report is still in DoD review - no studies conducted for at least 45 more days

Issues under the Revised Circular

- The “Agency” is DoD not the Navy
- DoD must delegate certain functions down to the Navy including appointing a Navy Competitive Sourcing Official (CSO)
- CSO will appoint competition officials, which includes Contracting Officer, ATO, etc.

ORGANIZATIONAL CONFLICTS OF INTEREST

- **Revised Circular more FAR-like**
- **Agency Tender competes with private sector**
- **Increased likelihood for conflicts of interest**

Conflicts of Interest, Cont.

- **At the Centers, the intent is that the teams will be "Fire-walled:"**

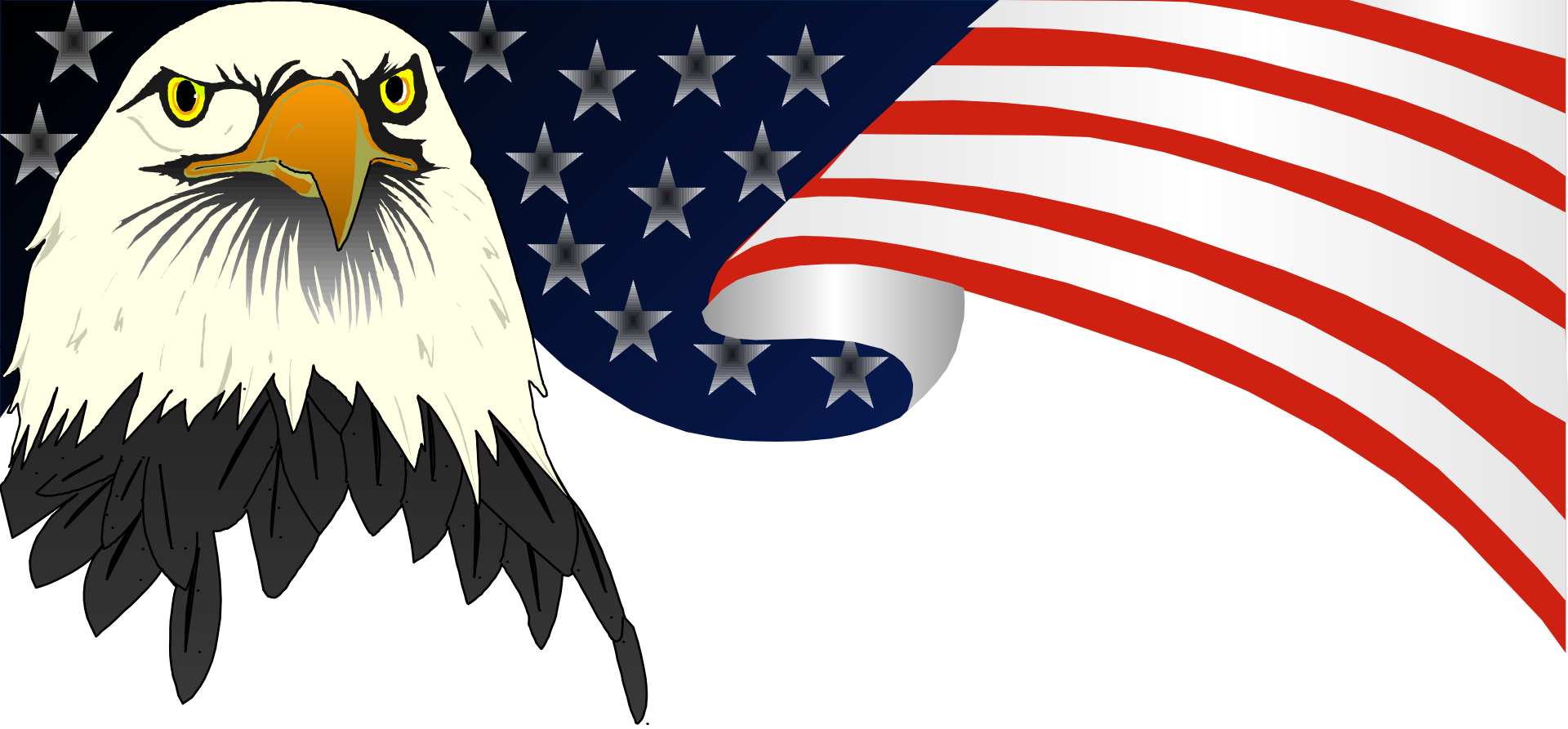
  Team 1 – Preliminary Planning and/or PWS Team

  Team 2 – Agency Tender Team

  Team 3 - "Other" – Acquisition Support

Conflicts of Interest, Cont.

- **Private Sector Offerors Must Select Team early in the game.**
- **Cannot be on Team 1 (Prelim Planning & PWS) and Team 2 (Agency Tender)**
- **Cannot be on Team 2 and Team 3**
- **Other scenarios will be reviewed on a case-by-case basis, absent DoD policy**



Questions?